

# WEST VIRGINIA CODE

*ANNOTATED*

## VOLUME 8

*1981 Replacement*

**1982 Supplement**

**Including Acts of the 1982 Regular and First Extraordinary Sessions**

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**CHAPTER 22.**  
**MINES AND MINERALS.**

**ARTICLE 1.**

**ADMINISTRATION; ENFORCEMENT.**

Sec.

22-1-4. Director of the department of mines —  
Powers and duties.

**§ 22-1-1. Definitions.**

Cited in State ex rel. Barker v. Manchin,  
W. Va. , 279 S.E.2d 622 (1981).

**§ 22-1-4. Director of the department of mines — Powers and duties.**

The director of the department of mines shall have full charge of the department. He shall have the power and duty to:

(1) Supervise and direct the execution and enforcement of the provisions of this chapter.

(2) Appoint a deputy director of the department of mines, fix his compensation and prescribe his powers and duties.

(3) Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out the provisions of this law and fix their compensation, except as otherwise provided in this article.

(4) Employ mine inspectors, and assign them to divisions or districts in accordance with the provisions of section seven [§ 22-1-7] of this article as may be necessary to fully and effectively carry out the provisions of this law, including the hiring and training of inspectors for the specialized requirements of surface mining, shaft and slope sinking, and surface installations and to supervise and direct such mine inspectors in the performance of their duties.

(5) Suspend, for good cause, any mine inspector without compensation for a period not exceeding thirty days in any calendar year.

(6) Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with this chapter.

(7) Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of this article.

(8) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(9) Make annually a full and complete written report of the administration of his department to the governor and the legislature of the state for the year ending the thirtieth day of June. Such report shall include the number of visits and inspections of mines in the State by mine inspectors, the quantity of coal,

coke and other minerals (including oil and gas) produced in the State, the number of men employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the department from all sources identifying each source of such funds, the expenditures of the department, the surplus or deficit of the department at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the department, the number of inspections made by each inspector, the number and type of violations found by each inspector: Provided, that no inspector shall be identified by name in this report. Such reports shall be filed with the governor and the legislature on or before the thirty-first day of December of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.

(10) Call or subpoena witnesses, to administer oaths and to require production of any books, papers, records, or other documents relevant or material to any hearing, investigation or examination of any mine or well permitted by this chapter. Any witness so called or subpoenaed shall receive forty dollars per diem and shall receive mileage at the rate of fifteen cents for each mile actually traveled, which shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by such witness.

(11) Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or his agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his representative.

(12) Perform all other duties which are expressly imposed upon him by the provisions of this chapter.

(13) Make all records of the department open for inspection of interested persons and the public.

(14) In conjunction with the director of the department of natural resources, adopt programs, regulations and procedures designed to assist the small coal operator with obtaining permits and meeting the environmental protection performance standards for strip and underground coal mining operations within the State. For the purposes of this subdivision, a small coal operator is one who is anticipated to mine less than two hundred thousand tons per year, but the department in determining tonnage shall consider wholly owned subsidiaries to be the same operation as the parent corporation. (1958, c. 13; 1971, c. 89; 1977, c. 121; 1979, c. 70; 1982, c. 103.)

**Effect of amendment of 1982.** — The amendment, in the first sentence of subdivision (10), deleted "for the purpose of conducting hearings into mine fires, mine explosions or any

mine accident" following "Call or subpoena witnesses," added "investigation or examination of any mine or well permitted by this chapter," and made other minor changes.

§ 22-2-42. Tele

Cited in Hill v. Board, 276 S.E.2d 805 (1971)

BOARD C

Sec. 22-2A-3. Board of coal mines; method of appointments; qualifications; preliminary investigation

§ 22-2A-3. Board of coal mines; qualifications; preliminary investigation

(a) The board shall be continued as provided in this section who shall be resigned or specified in this section

(1) The governor shall appoint those operators who have produced one million tons of coal in this State as operators in this State and who are affiliated, parent or subsidiary companies which have an owner or owners who have requested from the board a list of three names of persons who shall be persons of good character and safety. The board shall, in accordance with the qualifications of the persons appointed, make the major transactions of the board deemed to be the one half of the board in which the a

ARTICLE 2.  
COAL MINES.

ELECTRICITY

§ 22-2-42. Telephone service or communication facilities.

Cited in Hill v. Board of Review, W. Va.  
276 S.E.2d 805 (1981).

ARTICLE 2A.

BOARD OF COAL MINE HEALTH AND SAFETY.

Sec.

22-2A-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

22-2A-4a. Preliminary procedures for promulgation of rules and regulations.

Sec.

22-2A-4b. Health and safety administrator; qualifications; duties; employees; compensation.

22-2A-7. Compensation and expenses of board members.

§ 22-2A-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

(a) The board of coal mine health and safety, heretofore established, is continued as provided by this chapter. The board shall consist of seven members who shall be residents of this State, and who shall be appointed as hereinafter specified in this section:

(1) The governor shall appoint one member to represent the viewpoint of those operators in this State whose individual aggregate production exceeds one million tons annually and one member to represent the viewpoint of those operators in this State whose individual aggregate production is less than one million tons annually, which tonnage shall include tonnage produced by affiliated, parent and subsidiary companies and tonnage produced by companies which have a common director or directors, shareholder or shareholders, owner or owners. When such members are to be appointed, the governor may request from the major trade association representing operators in this State a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in coal mine health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated. For purposes of this subdivision, the major trade association representing operators in this State shall be deemed to be that association which represents operators accounting for over one half of the coal produced in mines in this State in the year prior to the year in which the appointment is to be made.

l gas) produced in the State, the n operation, statistics with regard the mines including the causes of rosecutions, the total funds of the source of such funds, the expendi- leficit of the department at the of fines collected, the amount of he number and type of violations ind turned over for collection, the ring the prior year, the titles and of the department, the number of nber and type of violations found or shall be identified by name in ie governor and the legislature on f the same year for which it was nted and distributed to interested

ister oaths and to require produc- ocuments relevant or material to f any mine or well permitted by aed shall receive forty dollars per fifteen cents for each mile actually treasury upon a requisition upon witness.

ling permanent or temporary in- appropriate action in the appropri- ator or his agent violates or fails notice or decision issued by the

pressly imposed upon him by the

open for inspection of interested

department of natural resources, designed to assist the small coal ig the environmental protection ground coal mining operations division, a small coal operator is hundred thousand tons per year, re shall consider wholly owned parent corporation. (1958, c. 13; . 103.)

ccident" following "Call or subpoena wit-," added "investigation or examination of ine or well permitted by this chapter," ade other minor changes.

(2) The governor shall appoint two members who can reasonably be expected to represent the viewpoint of the working miners of this State. If the major employee organization representing coal miners in this State is divided into administrative districts, such members shall not be from the same administrative district. The highest ranking official within the major employee organization representing coal miners within this State shall, upon request by the governor, submit a list of three nominees for each such position on the board: Provided, that if the major employee organization representing coal miners in this State is divided into administrative districts, and if there are two vacancies to be filled in accordance with the provisions of this subdivision, not more than two persons on each list of three nominees shall be from the same administrative district and at least three districts shall be represented on the two lists submitted, and if there is one vacancy to be filled, no names shall be submitted of persons from the same administrative district already represented on the board. Said nominees shall have a background in coal mine health and safety, and shall at the time of their appointment be employed in a position which involves the protection of health and safety of miners. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated.

(3) The governor shall appoint one public member who is professionally qualified in the field of occupational health and safety and who shall be (A) an employee of the institute of labor studies at West Virginia University or (B) a person who is engaged in or who has broad experience in occupational health and safety from the perspective of the worker. Such nominee shall have technical experience in occupational health and safety or education and experience in such field: Provided, that the nominee shall not have been, prior to his appointment to the board, employed by a mining or industrial business entity in a managerial or supervisory position, or shall not have been employed by the major employee organization representing coal miners in this State, or shall not have been a miner.

(4) The governor shall appoint one public member who is professionally qualified in the field of occupational health and safety and who shall have a degree in engineering or industrial safety and a minimum of five years' experience in the field of industrial safety engaged in constructing, designing, developing or administering safety programs: Provided, that the nominee shall not have been, prior to his appointment to the board, employed by a mining business entity in a managerial or supervisory position or shall not have been employed by the major employee organization representing coal miners in this State, or shall not have been a miner.

(5) All appointments made by the governor under the provisions of subdivisions (1), (2), (3) and (4) of this subsection shall be with the advice and consent of the senate.

(6) The seventh member of the board shall be the director of the department of mines who shall serve as chairman of the board. The director shall furnish to the board such secretarial, clerical, technical, research and other services as

are deemed necessary and shall be furnished by the board.

(b) The members (a) of this section shall be appointed on the date of this section or under prior enactments. The members shall be appointed in accordance with the provisions of this section and shall begin their term of office on the date of their appointment. The term of office shall be for a period of two years.

(1) With regard to the provisions of subdivision (1) of this section, the beginning term of office shall be for a period of two years.

(2) With regard to the provisions of subdivision (2) of this section, the beginning term of office shall be for a period of two years.

(3) The members appointed pursuant to subdivisions (3) and (4) of this section shall begin their term of office on the date of their appointment.

(4) Following the expiration of their term of office, the members shall be eligible for reappointment and shall serve for a term of two years.

(c) The governor shall, in accordance with the provisions of this section, certify all officers and employees of the department of mines who shall be a full-time employee performing the duties provided for in this section. The administrator shall, in accordance with the provisions of this section, certify all officers and employees of the department of mines who shall be a full-time employee performing the duties provided for in this section. The administrator shall, in accordance with the provisions of this section, certify all officers and employees of the department of mines who shall be a full-time employee performing the duties provided for in this section.

(d) The board shall, in accordance with the provisions of this section, certify all officers and employees of the department of mines who shall be a full-time employee performing the duties provided for in this section.

bers who can reasonably be expected g miners of this State. If the major miners in this State is divided into all not be from the same administra- within the major employee organiza- s State shall, upon request by the for each such position on the board, ization representing coal miners in e districts, and if there are two e provisions of this subdivision, not e nominees shall be from the same istricts shall be represented on the ncy to be filled, no names shall be ministrative district already rep- l have a background in coal mine l their appointment be employed in ealth and safety of miners. There ary of the qualifications of each submitted in accordance with the shall make his appointments from

ic member who is professionally nd safety and who shall be (A) an West Virginia University or (B) a xperience in occupational health r. Such nominee shall have tech- afety or education and experience hall not have been, prior to his ing or industrial business entity all not have been employed by the al miners in this State, or shall

member who is professionally nd safety and who shall have a a minimum of five years' experi- zed in constructing, designing, Provided, that the nominee shall e board, employed by a mining position or shall not have been representing coal miners in this

under the provisions of subdi- shall be with the advice and

the director of the department ard. The director shall furnish , research and other services as

are deemed necessary to the conduct of the business of the board, not otherwise furnished by the board.

(b) The members of the board to be appointed as provided for in subsection (a) of this section shall be so appointed within sixty days following the effective date of this section [July 1, 1982]. Any unexpired term of members of the board under prior enactments of this section shall end upon the appointment of members in accordance with the provisions of this section. Upon the initial appointment of members, the governor shall specify the length of the beginning term which each member shall serve, pursuant to the following formula:

(1) With regard to the two members appointed in accordance with the provisions of subdivision (1), subsection (a) of this section, one member shall serve a beginning term of one year, and one member shall serve a beginning term of two years.

(2) With regard to the two members appointed in accordance with the provisions of subdivision (2), subsection (a) of this section, one member shall serve a beginning term of one year and one member shall serve a beginning term of two years.

(3) The members appointed in accordance with the provisions of subdivisions (3) and (4), subsection (a) of this section shall each be appointed to serve a beginning term of three years.

(4) Following the beginning terms provided for in this subsection, members shall be nominated and appointed in the manner provided for in this section and shall serve for a term of three years. Members shall be eligible for reappointment.

(c) The governor shall appoint a health and safety administrator in accordance with the provisions of section four-b [§ 22-2A-4b] of this article, who shall certify all official records of the board. The health and safety administrator shall be a full-time officer of the board of coal mine health and safety with the duties provided for in section four-b of this article. The health and safety administrator shall have such education and experience as the governor deems necessary to properly investigate areas of concern to the board in the development of rules and regulations governing mine health and safety. The governor shall appoint as health and safety administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The health and safety administrator shall be a person who has not been, during the two years immediately preceding his appointment, and is not during his term, an officer, trustee, director, substantial shareholder or employee of any coal operator, or an employee or officer of an employee organization, or a spouse of any such person. The health and safety administrator shall have the expertise to draft proposed rules and regulations and shall prepare such rules and regulations as are required by this chapter and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chairman, or upon the request of any three members of the board. Under the direction of the board, the health and safety administrator shall prepare an agenda for

each board meeting giving priority to the promulgation of rules and regulations as may be required from time to time by this chapter, and as may be required to improve coal mine health and safety. The health and safety administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the chairman, in which event members shall be notified of the board meeting and the agenda in a manner to be determined by the chairman: Provided, that upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice or additional agenda.

When proposed rules and regulations are to be finally adopted by the board, copies of such proposed rules and regulations shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules and regulations shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules and regulations. When a member shall fail to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the health and safety administrator shall notify the member and the governor of such fact. Such member shall be removed by the governor unless good cause for absences is shown.

(e) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, that in the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to the governor within thirty days after the vacancy occurs by the major trade association or major employee organization, if any, which nominated the person whose seat on the board is vacant. The vacancy shall be filled by the governor within thirty days of his receipt of the list of nominations.

(f) A quorum of the board shall be five members which shall include the director, at least one member representing the viewpoint of operators and at least one member representing the viewpoint of the working miners, and the board may act officially by a majority of those members who are present. (1977, c. 121; 1980, c. 92; 1982, c. 104.)

Effect of amendment of 1982. — The amendment substituted the present provisions for those appearing in the bound volume.

Effective date. — Acts 1982, c. 104 takes effect July 1, 1982.

§ 22-2A-4a. Pre rule

(a) Prior to the subsection (c), section the preliminary proposed forth in this section

(1) During a board any board member n administrator on his possible regulation;

(2) Upon receipt administrator shall meeting, of the tech the staff time requir board to act on the s conclusions of law v regulations;

(3) The board sh determine whether regulation concern;

(4) After reviewir the proposed rules comment as provide

(5) The board sh rules and regulation

(6) The board sha the next scheduled b proposed rules and r technical evidence d article;

(7) The board sha conclusions of law;

(8) The board sh regulations.

(b) By the concur dispense with the p established, except and regulations pre this section and sec

(c) Without undu conduct of meetings of proposed rules a section. (1982, c. 10

Effective date. — A effect July 1, 1982.

### § 22-2A-4a. Preliminary procedures for promulgation of rules and regulations.

(a) Prior to the posting of proposed rules and regulations as provided for in subsection (c), section four [§ 22-2A-4(c)] of this article, the board shall observe the preliminary procedure for the development of rules and regulations set forth in this section:

(1) During a board meeting or at any time when the board is not meeting, any board member may suggest to the health and safety administrator, or such administrator on his own initiative may develop, subjects for investigation and possible regulation;

(2) Upon receipt of a suggestion for investigation, the health and safety administrator shall prepare a report, to be given at the next scheduled board meeting, of the technical evidence available which relates to such suggestion, the staff time required to develop the subject matter, the legal authority of the board to act on the subject matter, including a description of findings of fact and conclusions of law which will be necessary to support any proposed rules and regulations;

(3) The board shall by majority vote of those members who are present determine whether the health and safety administrator shall prepare a draft regulation concerning the suggested subject matter;

(4) After reviewing the draft regulation, the board shall determine whether the proposed rules and regulations should be posted and made available for comment as provided for in section four [§ 22-2A-4] of this article;

(5) The board shall receive and consider those comments to the proposed rules and regulations as provided for in section four of this article;

(6) The board shall direct the health and safety administrator to prepare for the next scheduled board meeting findings of fact and conclusions of law for the proposed rules and regulations, which may incorporate comments received and technical evidence developed, and which are consistent with section four of this article;

(7) The board shall adopt or reject or modify the proposed findings of fact and conclusions of law; and

(8) The board shall make a final adoption or rejection of the rules and regulations.

(b) By the concurrence of at least four members of the board, the board may dispense with the procedure set out in (a) above or any other procedural rule established, except that the board shall in all instances when adopting rules and regulations prepare findings of fact and conclusions of law consistent with this section and section four [§ 22-2A-4] of this article.

(c) Without undue delay, the board shall adopt an order of business for the conduct of meetings which will promote the orderly and efficient consideration of proposed rules and regulations in accordance with the provisions of this section. (1982, c. 104.)

**Effective date.** — Acts 1982, c. 104 takes effect July 1, 1982.



**y administrator; quali-  
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Administrator shall also conduct an  
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al reports required by subsection (e),  
and section six [§ 22-2A-6] of this

**§ 22-2A-7. Compensation and expenses of board members.**

Each member of the board not otherwise employed by the State shall receive one hundred dollars per diem while actually engaged in the performance of the duties of the board. All members shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party, the members shall not be reimbursed by the State. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines. No employer shall prohibit a member of the board from exercising leave of absence from his place of employment in order to attend a meeting of the board or a meeting of a subcommittee of the board, or to prepare for a meeting of the board, any contract of employment to the contrary notwithstanding. (1979, c. 72; 1980, c. 93; 1982, c. 104.)

**Effect of amendment of 1982.** — The amendment, in the first sentence, substituted "not otherwise employed by the State" for "except the director of the department of mines" and substituted "one hundred dollars" for "seventy-five dollars"; in the second sentence,

substituted "All members" for "Each such member"; added the fourth sentence; and made other minor changes.

**Effective date.** — Acts 1982, c. 104 takes effect July 1, 1982.

**ARTICLE 4.**

**OIL AND GAS WELLS.**

Sec.  
22-4-11. Permits not to be issued on flat well  
royalty leases; legislative find-

ings and declarations; permit  
requirements.

**§ 22-4-11. Permits not to be issued on flat well royalty  
leases; legislative findings and declarations;  
permit requirements.**

(a) The legislature hereby finds and declares:

(1) That a significant portion of the oil and gas underlying this State is subject to development pursuant to leases or other continuing contractual agreements wherein the owners of such oil and gas are paid upon a royalty or rental basis known in the industry as the annual flat well royalty basis, in which the royalty is based solely on the existence of a producing well, and thus is not inherently related to the volume of the oil and gas produced or marketed;

(2) That continued exploitation of the natural resources of this State in exchange for such wholly inadequate compensation is unfair, oppressive, works an unjust hardship on the owners of the oil and gas in place, and unreasonably deprives the economy of the State of West Virginia of the just benefit of the natural wealth of this State;

(3) That a great portion, if not all, of such leases or other continuing contracts based upon or calling for an annual flat well royalty, have been in existence for a great many years and were entered into at a time when the techniques by which oil and gas are currently extracted, produced or marketed,

were not known or contemplated by the parties, nor was it contemplated by the parties that oil and gas would be recovered or extracted or produced or marketed from the depths and horizons currently being developed by the well operators;

(4) That while being fully cognizant that the provisions of section ten, article I of the United States constitution and of section four, article III of the constitution of West Virginia, proscribe the enactment of any law impairing the obligation of a contract, the legislature further finds that it is a valid exercise of the police powers of this State and in the interest of the State of West Virginia and in furtherance of the welfare of its citizens, to discourage as far as constitutionally possible the production and marketing of oil and gas located in this State under the type of leases or other continuing contracts described above.

(b) In the light of the foregoing findings, the legislature hereby declares that it is the policy of this State, to the extent possible, to prevent the extraction, production or marketing of oil or gas under a lease or leases or other continuing contract or contracts providing a flat well royalty or any similar provisions for compensation to the owner of the oil and gas in place, which is not inherently related to the volume of oil or gas produced or marketed, and toward these ends, the legislature further declares that it is the obligation of this State to prohibit the issuance of any permit required by it for the development of oil or gas where the right to develop, extract, produce or market the same is based upon such leases or other continuing contractual agreements.

(c) In addition to any requirements contained in this article with respect to the issuance of any permit required for the drilling, re-drilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation to another, no such permit shall be hereafter issued unless the lease or leases or other continuing contract or contracts by which the right to extract, produce or market the oil or gas is filed with the application for such permit. In lieu of filing the lease or leases or other continuing contract or contracts, the applicant for a permit described herein may file the following:

- (1) A brief description of the tract of land including the district and county wherein the tract is located;
- (2) The identification of all parties to all leases or other continuing contractual agreements by which the right to extract, produce or market the oil or gas is claimed;
- (3) The book and page number wherein each such lease or contract by which the right to extract, produce or market the oil or gas is recorded; and
- (4) A brief description of the royalty provisions of each such lease or contract.

(d) Unless the provisions of subsection (e) are met, no such permit shall be hereafter issued for the drilling of a new oil or gas well, or for the re-drilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing to allow the migration of fluid from one formation to another, of an existing oil or gas production well, where or if the right to extract, produce or market the oil or gas is based upon a lease or leases or other

continuing contract provision for compensation inherently related to the volume of oil or gas marketed.

(e) To avoid the expense of a permit, the owner may file with such permit a statement authorized by the tender to the owner of the amount paid to or for the wellhead facility at the wellhead facility deducting the amount paid to or for the well in place, on all such permits. If such affidavit is filed, the permit shall be treated as if it were a permit for oil or gas under a lease or leases or other continuing contract or contracts.

(f) The owner of the oil or gas in place, his rights established by such lease or other continuing contract or contracts.

(g) The provisions of this article which apply to leases or other continuing contracts for the production or marketing of oil or gas or any well under a lease or other continuing contract or contracts.

(h) The administrative provisions of this article which apply to such lease or other continuing contract or contracts.

(i) The provisions of this article which apply to the date of this act.

§ 22-4-11a. Oil and Gas Conservation Act

Term of acting administrator and Gas Conservation Act appointed acting administrator of oil and gas, which term expires on the 1st day of January, 1982. Op. Att'y Gen.,

§ 22-4A-2. De

Quoted in Devon County, 280 S.E.2d 108 (1982)

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arketing of oil and gas located  
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legislature hereby declares that  
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continuing contract or contracts providing for flat well royalty or any similar  
provision for compensation to the owner of the oil or gas in place which is not  
inherently related to the volume of oil and gas so extracted, produced and  
marketed.

(e) To avoid the permit prohibition of subsection (d) hereof, the applicant  
may file with such application an affidavit which certifies that the affiant is  
authorized by the owner of the working interest in the well to state that it shall  
tender to the owner of the oil or gas in place not less than one eighth of the total  
amount paid to or received by or allowed to the owner of the working interest  
at the wellhead for the oil or gas so extracted, produced or marketed before  
deducting the amount to be paid to or set aside for the owner of the oil or gas  
in place, on all such oil or gas to be extracted, produced or marketed from the  
well. If such affidavit be filed with such application, then such application for  
permit shall be treated as if such lease or leases or other continuing contract  
or contracts comply with the provisions of this section.

(f) The owner of the oil or gas in place shall have a cause of action to enforce  
his rights established by this section.

(g) The provisions of this section shall not affect or apply to any lease or  
leases or other continuing contract or contracts for the underground storage of  
gas or any well utilized in connection therewith or otherwise subject to the  
provisions of article seven [§ 22-7-1 et seq.] of this chapter.

(h) The administrator shall enforce this requirement irrespective of whether  
such lease or other continuing contract was executed before or after the effec-  
tive date of this section [March 13, 1982].

(i) The provisions of this section shall not adversely affect any rights to free  
gas. (1982, c. 105.)

**§ 22-4-11a. Oil and gas conservation commissioner as  
acting administrator; administrative assistant.**

Term of acting administrator. — The Oil and Gas Conservation Commissioner may be appointed acting administrator of the office of oil and gas, which term is not to exceed June 30, 1982. Op. Att'y Gen., Feb. 5, 1982, No. 43. Salary of acting administrator of the office of oil and gas is to be paid by the Director of the Department of Mines. Op. Att'y Gen., Feb. 5, 1982, No. 43.

**ARTICLE 4A.**

**OIL AND GAS CONSERVATION.**

**§ 22-4A-2. Definitions.**

Quoted in *Devon Corp. v. Miller*, W. Va. 280 S.E.2d 108 (1981).